

EXHIBIT 2

Pages 1 - 207

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

WAYMO LLC,)
)
 Plaintiff,)
)
 VS.) NO. C 17-00939 WHA
)
 UBER TECHNOLOGIES, INC.; OTTO)
 TRUCKING LLC; and OTTOMOTTO)
 LLC,)
)
 Defendants.)

San Francisco, California
Wednesday, September 27, 2017TRANSCRIPT OF PROCEEDINGSAPPEARANCES:

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Wednesday - September 27, 20177:59 a.m.P R O C E E D I N G S

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THE COURT: Okay. Welcome. Please be seated. Let's
call the case.

THE CLERK: Calling Civil Action 17-939, Waymo, LLC,
versus Uber Technologies, Inc., et al. Counsel, please
approach the podium and state your appearances.

MR. VERHOEVEN: Good morning, Your Honor.

Charles Verhoeven. And with me is David Perlson,
Melissa Baily, Andrea Roberts, Lindsay Cooper, Felipe Corredor,
and David Eiseman. We're ready to go.

THE COURT: Thank you.

MR. GONZÁLEZ: Good morning, Your Honor.

Arturo González, Michael Jacobs, from Morrison Foerster, for
Uber.

MS. DUNN: Good morning, Your Honor. Karen Dunn and
Meredith Dearborn, from Boies Schiller, for Uber.

MR. CARMODY: Good morning, Your Honor.

Bill Carmody, with Susman Godfrey. And with us I have
Joe Grinstein and Shawn Rabin; Cory Buland, Ian Gore, and
Halley Josephs.

THE COURT: Good. Welcome.

MR. CHATTERJEE: Good morning, Your Honor.

Neel Chatterjee and my colleague, Brett Schuman, for

1 can argue that those things are not in this case.

2 So they're focused on bad faith. We have included a jury

3 instruction on the jury form, on the Verdict Form -- bad

4 faith -- that we would like to present.

5 But whether or not Your Honor agrees with us -- and we

6 will argue that separately -- this is relevant both to the

7 facts that are already in this case, and it is absolutely

8 intertwined with something very important that is happening in

9 this case that they want to make sure to keep out, which is the

10 lawyer-driven and competitive nature of what drove this company

11 to say, *You know, this first investigation is not good enough.*

12 *Please go back, because we might need to act before this*

13 *acquisition closes.*

14 So they want to put on evidence of our reaction to their

15 Complaint, but they want to make sure nobody knows why they

16 filed it. And that doesn't make any sense.

17 **THE COURT:** What do you say to the Levandowski point

18 that --

19 **MS. DUNN:** Oh.

20 **THE COURT:** -- as to the empty chair, and so forth?

21 **MS. DUNN:** Well, first I want to correct something.

22 While, you know, Waymo says we didn't sue, we did sue

23 Levandowski, but they have not sued Levandowski for

24 trade-secret theft. And a brick is not a wall. But once you

25 get a number of bricks, which we now have, because of these

1 Sasha Zbrozek documents, because of the intertwined-competition

2 theme, and because they didn't sue Anthony Levandowski for

3 trade secrets anywhere, even though they clearly sued him

4 somewhere for something, just not this, it starts to resemble a

5 wall.

6 **THE COURT:** What do you mean: A wall?

7 **MS. DUNN:** Which is that there is -- this is a -- a

8 lawsuit that at least in substantial part was motivated by the

9 competitive relationships between these companies, and Google's

10 decision that they were going to compete with Uber, and not

11 partner with Uber. And it is part and parcel of the documents

12 that we've already seen that Waymo tried to keep from us.

13 But this is a very important part of the presentation of

14 this case. And if they can come in --

15 **THE COURT:** I don't understand. I asked you about

16 Levandowski, and you veered off on competition again.

17 **MS. DUNN:** I apologize.

18 **THE COURT:** They don't want the fact that -- they

19 don't want you saying, *Hey, they didn't sue Levandowski.*

20 *Levandowski is the bad guy. They should have sued him. We're*

21 *innocent.*

22 So what do you say to that?

23 **MS. DUNN:** That -- I don't see the problem with that.

24 They didn't sue him for trade-secrets theft. They've made this

25 person's conduct the centerpiece of their entire case. He's --

1 Your Honor has ruled that he might come to court, and take the

2 Fifth. So the jury is going to have questions about this. And

3 it is absolutely germane to everything that's going on here for

4 the jury to know that Mr. Levandowski has not been sued for

5 Mr. Levandowski's conduct, at all; and instead, Uber has been

6 sued, which -- you know, even though nothing has been found at

7 Uber.

8 So you have to wonder. And the jury will wonder, *Huh.*

9 *What's that about?*

10 And so, yes, we do think that that's relevant.

11 **THE COURT:** Okay.

12 **MR. EISEMAN:** Can I briefly respond, Your Honor?

13 **THE COURT:** Please respond.

14 **MR. EISEMAN:** First of all, with respect to not suing

15 Mr. Levandowski for trade-secret misappropriation, we have the

16 right to sue Uber and the other defendants in this court -- in

17 federal court -- for trade-secret misappropriation. And we

18 made the decision not to include Mr. Levandowski under that

19 claim, because we wanted to stay in federal court. There's

20 nothing improper about that. There's nothing improper about

21 enforcing our intellectual-property rights.

22 And so for them to try to turn documents relating to the

23 concerns that Waymo had and Google had about Mr. Levandowski's

24 departure into some argument that we've brought this lawsuit in

25 bad faith, when they aren't alleging an antitrust claim, some

1 sort of sham-litigation claim --

2 **THE COURT:** But you know, in every patent case --

3 This is no longer a patent case, but in every patent

4 case -- I bet I could go find ten examples where you've done

5 it, yourself -- the defendant always argues, *Hey, this is not*

6 *about patents. This is not about IP. This is simply one*

7 *competitor trying to put the other one out of business.* That

8 happens all of the time. Right?

9 **MR. EISEMAN:** But in --

10 **THE COURT:** Have you ever made that argument? I bet

11 you have.

12 **MR. EISEMAN:** No. I've --

13 **THE COURT:** So why shouldn't they get to make this

14 very argument that, *Hey, it isn't about trade secrets. This is*

15 *about trying to put Uber out of the business, so you and Lyft*

16 *can take it over?*

17 **MR. EISEMAN:** Well, because the documents they cite

18 in their motion --

19 For example, Exhibit 37 is an e-mail recounting a

20 conversation that Mr. Page had, where he expressed concern; but

21 the concern that was expressed was that Mr. Levandowski was

22 leaving Waymo, and soliciting employees from Waymo.

23 And that's a legitimate concern. That's not some sort of

24 anticompetitive purpose. So that it's true that in general in

25 cases like this, Your Honor, that people talk about fierce

1 competition. And we're not suggesting that both sides won't do
2 that in this case; but they shouldn't be allowed to use
3 documents out of context. It's a classic 403, where we're
4 going to end up litigating a bunch of side issues.

5 **THE COURT:** Well, maybe there's some specific
6 documents where I could say, *Yeah, that's too far. And that's*
7 *misuse*; but just on general-themes point --

8 **MR. EISEMAN:** Well, Your Honor --

9 **THE COURT:** -- I'm having some trouble with your
10 point.

11 **MR. EISEMAN:** If Your Honor's taking this under
12 submission -- and it sounds like you are -- we'd ask you to
13 look at Exhibit 37 and Exhibit 43.

14 **THE COURT:** Wait a minute. Let me write those down.
15 Exhibit 37 and 43. Okay.

16 **MR. EISEMAN:** And we'd ask you to look at those --
17 they're attached to the opposition; the defendants' opposition
18 to our motion -- because those are the kinds of documents we're
19 concerned about.

20 And then lastly, Your Honor, on the -- again, going back
21 to the empty-chair argument that we feel very strongly about,
22 for the reasons we've put in our papers and for the reasons
23 we've mentioned. And we'd ask you to not let them make that
24 argument, because we have a legitimate reason --

25 **THE COURT:** Are you going to make the empty-chair

1 argument? If you are, I think you would wind up regretting it,
2 because I would interrupt, and say to the jury, *Okay.*
3 *Mr. Levandowski is not here. That's true. He's not a*
4 *defendant. However, they have the right to sue Uber for*
5 *whatever wrongs it did, if any. And if you find, ladies and*
6 *gentlemen of the jury, that Uber did something wrong, then*
7 *they're liable for that, even if Levandowski would also be*
8 *liable for that. And this argument about the empty chair is*
9 *bogus.* Then I will spell it. B-o-g-u-s.

10 So I have a feeling I'm putting you on notice I would not
11 allow that argument.

12 **MS. DUNN:** We have heard you.

13 **THE COURT:** If you even go close to it, I would
14 interrupt. Without further consultation, I would tell the jury
15 just what I said. So that part, I agree with you on, but --
16 but --

17 **MR. GONZÁLEZ:** Your Honor, on the empty chair --

18 **THE COURT:** No. You're not going to get to do this,
19 Mr. González. That would just be a litigation trick.

20 **MR. GONZÁLEZ:** No, no. No. This not a trick.

21 If they, in their Opening Statement, spend two hours
22 talking about Anthony Levandowski, I assume we can say,
23 *Anthony Levandowski is not the defendant here. Uber is.*

24 **THE COURT:** Of course, you can say that.

25 **MR. GONZÁLEZ:** Okay.

1 **THE COURT:** What you can say is --
2 You can't imply that they don't have the right to sue you.
3 What you can say is that you're the defendant, and they've
4 got to prove the case again you.

5 **MR. GONZÁLEZ:** Exactly.

6 **MS. DUNN:** Right.

7 **THE COURT:** That's fair. You can say that.

8 **MS. DUNN:** Your Honor, as to the first point --

9 **THE COURT:** But I want to come back. We've got to
10 tell the jury something about Levandowski and his role. They
11 will be bothered about this from the very get-go. And I deal
12 with juries all of the time, and I know how they think. They
13 are going to --

14 I'm going to tell them something. If you-all lawyers
15 don't give me help, I'm going to make up my own instruction.
16 And I'll just tell them *sua sponte* that there's another
17 arbitration going against Levandowski. So if you don't come up
18 with something cogent to tell them, I'm going to do it on my
19 own.

20 **MR. EISEMAN:** We'll work with opposing counsel to
21 come up with an instruction.

22 **THE COURT:** All right. Please do. All right.

23 **MS. DUNN:** Your Honor, just on the first point, very
24 quickly, the documents are attached to our motion, but this is
25 what we're talking about: Their meeting notes from August of

1 2016, where it says Uber is generally considered to be
2 Chauffeur's main competitor, which contradicts what they
3 learned from Anthony, with his intent to not be in the same
4 space and compete against Google.

5 **THE COURT:** Whose is this? Is this a Waymo document?

6 **MS. DUNN:** Waymo meeting notes from August of 2016.

7 It goes on to say, *If Google were to take actions on*
8 *preventing the acquisition, we need to move as quickly as*
9 *possible. Look at prior to Anthony's departure and course of*
10 *his employment whether or not they took with them Confidential*
11 *Information or trade secrets of the business. Timing here is*
12 *important, since we have to decide whether we need to take some*
13 *action before the Transaction closes.*

14 Okay? So --

15 **THE COURT:** Okay. So, so what?

16 **MS. DUNN:** So the point is that their investigation
17 into Anthony was tied and in the same documents as their
18 discussion of competing with Uber, and wanting to prevent the
19 acquisition, which is a rather major point.

20 **MR. EISEMAN:** But Your Honor, in fact, the
21 acquisition went forward. And it closed. And Google and Waymo
22 didn't take the action that is suggested in this memo.

23 **THE COURT:** Well, I know. I'm not --

24 When we get to the issue of the mitigation thing, I am
25 leaning against Uber on that, and in your favor on that.

1 I think that, however, this -- what I just heard, though,
 2 is relevant to something else. It's not just --
 3 You know, just because you might win on mitigation of
 4 damages, that e-mail would tend to show that Waymo felt some --
 5 knew that if they were going to try to block the acquisition,
 6 they ought to be looking into where these trade secrets --
 7 And a jury might conclude from the time that it took, even
 8 though it might not be enough to knock out the case as a matter
 9 of law -- but from the time it took you to eventually get your
 10 act together and bring a lawsuit, that maybe Sasha was correct,
 11 and these were low-grade trade secrets, and that that was the
 12 -- so that it reflects on the --
 13 In other words, if these were the Crown Jewels, you would
 14 have been in court the next day; but since they weren't the
 15 Crown Jewels and they were low-grade, it took a long time to
 16 get this lawsuit together.
 17 Now, I'm not saying I buy the argument. I'm just saying a
 18 reasonable jury could buy the argument, based on what I just
 19 heard.
 20 **MR. EISEMAN:** Your Honor, obviously, we disagree with
 21 the concept that any --
 22 **THE COURT:** This is just a jury argument they can
 23 make.
 24 **MR. EISEMAN:** It would be a jury argument that they
 25 could make if they had an antitrust sham-litigation claim, or

1 some sort of unfair-competition claim.
 2 But the fact is this is an affirmative trade-secret claim
 3 we're bringing. And it's just --
 4 **THE COURT:** It's same as the patent cases. They want
 5 to say, *This is just one competitor trying to stymie the next*
 6 *competitor*. That's a fair argument. They make it in every one
 7 of these patent cases. I know you've made that argument. I
 8 could go back and find it. So I think that's okay. You can
 9 make the argument: Just trying to stamp out competition.
 10 That's okay. You're going to have to suffer that -- that
 11 thing.
 12 And on Levandowski, they cannot make the empty-chair
 13 argument. That's clear.
 14 But we have to explain. Levandowski's name's going to be
 15 all over this case. We have to explain that he is being sued
 16 in some arbitration. And you lawyers figure out how to word
 17 that.
 18 **MR. EISEMAN:** We will, Your Honor. Thank you.
 19 **MS. DUNN:** Thank you, Your Honor.
 20 **THE COURT:** All right. Hang on a minute.
 21 We're not even halfway through this hearing.
 22 So okay. While we're on that subject, Motion *in Limine*
 23 Number 1, Waymo wants to preclude defendants from presenting
 24 their bonus theory about 14,000.
 25 Now, can I just give you my main concern?



1 I don't quite see how any of what you have come up with
 2 gets admitted into evidence, because --
 3 I'm talking now to Uber.
 4 -- because it's hearsay. So how do you get around the
 5 fact that Kalanick is willing to come in and say that
 6 Levandowski told him? This is Hearsay 101. So I don't see how
 7 you get around that.
 8 **MS. DEARBORN:** Well, so, Your Honor, this -- this is
 9 a fundamental point for this motion, which is that we accept
 10 Your Honor's -- although we disagree with it, we accept Your
 11 Honor's ruling that the March 29th, 2017, conversation between
 12 Mr. Levandowski and Mr. Kalanick is excluded from evidence.
 13 That is not what this motion is about.
 14 This motion is about Uber's other evidence; other
 15 nonprivileged evidence.
 16 **THE COURT:** Good. Give me one admissible piece of
 17 evidence that would support the theory that he did this for
 18 bonus reasons.
 19 **MS. DEARBORN:** So the timing of Mr. Levandowski's
 20 downloads in relation to the timing of his bonus payments is
 21 one.
 22 The structure of the Chauffeur Bonus Plan, which created
 23 perverse incentives, is another.
 24 The structure of the Bonus Plan that created incentives
 25 for Google to undervalue the project -- Project Chauffeur -- is

1 another.
 2 Testimony from Google's witnesses that they were -- that
 3 they were nervous about receiving their bonus payments in
 4 December of 2015; that negotiations were contentious; that they
 5 were being conducted by people with -- with no -- with poor
 6 communication between the parties; that -- or between --
 7 between the members of the team and those who were conducting
 8 the negotiation.
 9 All of that is circumstantial evidence, Your Honor. We
 10 acknowledge that.
 11 But there is no privilege issue here, and there's no
 12 hearsay issue here.
 13 There -- these are -- it is circumstantial evidence that
 14 the timing of -- that the timing of all of this lines up.
 15 And, Your Honor, I want to be very clear. Waymo is going
 16 to marshal its own circumstantial evidence in service of its
 17 own preferred theory as to why Mr. Levandowski may have done
 18 what he did. They are going to say, *Well, the timing of his*
 19 *downloads lines up with meetings with Uber executives*.
 20 All we ask is exactly the same opportunity: The
 21 opportunity to marshal circumstantial evidence of the timing of
 22 the downloads, and other evidence from Google's own files, from
 23 Google's own witnesses, from our own witnesses who were there
 24 at the time, to talk about the issue.
 25 **THE COURT:** Let me ask you about the March

1 presence of the jury unless it's so obvious that I might say,
 2 "Can I have a stipulation to excuse Mr. So-and-So?"
 3 But most of the time if I think it's even arguable one way
 4 or the other, I would wait till the next break and then I would
 5 say, "Okay. Any challenges for cause?" Then you would say,
 6 "Yeah, we want to challenge 1 and 2." Then I would hear you
 7 out on that, hear the other side out.
 8 **MR. GONZALEZ:** Thank you, Your Honor.
 9 **THE COURT:** That's the way it works.
 10 **MR. EISEMAN:** Your Honor -- oh, Mr. Carmody?
 11 **MR. CARMODY:** No, I'm fine.
 12 **MR. EISEMAN:** One clarification, on the juror
 13 questionnaire, Question 9, we had understood that the Court was
 14 going to mail that questionnaire out.
 15 **THE COURT:** No. No, no, no. They're going to fill
 16 it in when they get here in the courtroom, and you will not get
 17 the answers until that person is called forward.
 18 **MR. EISEMAN:** Understood, Your Honor.
 19 **THE COURT:** I don't want anybody -- I know you
 20 promised me you won't do that, but I don't want any possible
 21 jury consultant or somebody sneaking that and invading the
 22 privacy of those jurors, but I will give it to you when they
 23 show up.
 24 The one thing that we ought to discuss is if there is an
 25 obvious question like "I hate Uber." Let's say they said, "I

1 hate Uber and I wouldn't use Uber if it was the last cab on
 2 earth." I would just excuse that person. You're not going to
 3 get a chance to rehabilitate them.
 4 So you will get -- we'll get a few of those on both sides.
 5 They could say the same thing about Google. So I think that's
 6 a small problem that I think you will both agree to and we'll
 7 solve that later.
 8 **MR. EISEMAN:** Thank you, Your Honor.
 9 **THE COURT:** Here's another problem we need to
 10 address. You know how I feel. I feel the public should hear
 11 as much of the evidence as possible, so I want the parts that
 12 have to be on a closed courtroom -- right now I'm just talking
 13 trade secrets. I think we ought to try to segregate that to a
 14 given day or you come up with a practical way so that we don't
 15 have the problem of having to send witnesses -- I'm sorry --
 16 the public in and out of the courtroom.
 17 So think about that in your organization of witnesses,
 18 that we have a segment where the courtroom's cleared, the jury
 19 can hear it; but what we don't have is in, out, in, out, over
 20 the course of a day. It just is not good for the -- it's not
 21 good for the jury because there's all that disruption, but at
 22 the same time the public has a right to hear what goes on in
 23 their District Court.
 24 I think I've run out of questions. Do you have anything
 25 that I forgot? She says no.

1 I will see you again what day? Next week on the motion
 2 for continuance. I still am trying my best to keep the trial
 3 date on October 10th. It would be a major disruption in my
 4 calendar to move it, but I am going to be fair to both sides,
 5 and I want to see you back here on the 3rd?
 6 **THE CLERK:** Yes. At 10:30.
 7 **THE COURT:** What day is it?
 8 **MR. VERHOEVEN:** It's October 3rd.
 9 **THE COURT:** The 3rd?
 10 **MR. VERHOEVEN:** Yes.
 11 **THE COURT:** And what time will you be here? Do we
 12 have a time?
 13 **THE CLERK:** 8:00 o'clock.
 14 **THE COURT:** 8:00 o'clock. Okay.
 15 So unless you have more, it's now almost 1:00 o'clock, we
 16 will break for now, and then I will see you on October 3rd.
 17 All right?
 18 **MR. VERHOEVEN:** Thank you, Your Honor.
 19 **MR. CARMODY:** Thank you, Your Honor.
 20 **THE COURT:** All right. Good luck to both sides.
 21 (Proceedings adjourned at 12:39 p.m.)
 22 ---oOo---

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 3 **CERTIFICATE OF REPORTER**
 4 I certify that the foregoing is a correct transcript
 5 from the record of proceedings in the above-entitled matter.
 6
 7 DATE: Wednesday, September 27, 2017
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 11 
 12 Jo Ann Bryce, CSR No. 3321, RMR, CRR
 13 U.S. Court Reporter
 14
 15 
 16 Lydia Zinn, CSR No. 9223, FCRR
 17 U.S. Court Reporter
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